United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,188

D. C. TRANSIT SYSTEM, INC., PETITIONER

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION, RESPONDENT

W.M.A. TRANSIT COMPANY, INTERVENOR.

Petition to Review Orders of the
Washington Metropolitan Area Transit Commission

Decided March 7, 1967

Mr. Harvey M. Spear, with whom *Mr. Manuel J. Davis* was on the brief, for petitioner.

Mr. Russell W. Cunningham for respondent.

Mr. Stanley H. Kamerow, with whom *Mr. Allan L. Kamerow* was on the brief, for intervenor.

Before FAHY, MCGOWAN and TAMM, *Circuit Judges.*

MCGOWAN, *Circuit Judge:* This is an invocation of the power vested in us by Congress to review orders of the Washington Metropolitan Area Transit Commission. This

review authority is but one facet of the Washington Metropolitan Area Transit Regulation Compact, Public Law 86-794, 74 Stat. 1031 (1960), which brought the Commission into being as part of a comprehensive scheme, transcending state lines, for the regulation of mass transit.[1] The orders under review directed two bus companies—Alexandria, Barcroft and Washington Transit Company, Inc. (ABW), and W.M.A. Transit Company (WMA)—to extend their routes from their present terminals at 11th and 12th Streets and Pennsylvania Avenue, N. W., to the vicinity of 18th and L Streets, N. W. The complainant here is D.C. Transit System, Inc. (Transit), which provides bus service within the District of Columbia generally and, in particular, along the route extensions of ABW and WMA ordered by the Commission. WMA has intervened here in support of the Commission's action. We have concluded, for the reasons hereinafter appearing, that that action must be set aside.

I

Transit has pressed upon us a number of respects in which it asserts the Commission has erred. We do not

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[1] The regulatory provisions are contained in a Compact entered into by Virginia, Maryland, and the District of Columbia. The Compact is set forth in a statute wherein Congress has, as required by the Constitution, given its consent to it. Other provisions of the statute, as distinct from the Compact, provide among other things that (1) the powers of the Public Utilities Commission of the District of Columbia with respect to transportation shall be suspended during the life of the Compact, and (2) the rights, duties, and obligations created by the Act of July 24, 1956, Public Law 757, 70 Stat. 598, granting a franchise to D.C. Transit System, Inc., shall not be impaired or affected by anything in the Compact or in the statute consenting to it. The statute consenting to and embodying the Compact is set forth in 1 D.C. Code §§ 1410-16 (1961 ed.).

need to address ourselves to more than the essential premise upon which the Commission proceeded. This was that the grandfather certificates held by ABW and WMA encompassed the routes as extended, and that all that the Commission had to consider, before ordering ABW and WMA to provide the additional service, was whether there was any significant demand for it. As the Commission put the matter in its order under review, if what it termed the "crucial issue" of the scope of the grandfather certificates be decided in favor of an expansive reading of them, then the "secondary issue" of the public interest "can largely be determined by an inquiry into the demand for the proposed service." Thus it was that upon evidence designed to show that ABW and WMA riders would be convenienced by the route extensions and would make use of them, and without reference to the adequacy of the existing service being provided by Transit or the impact upon Transit and its riders of the resulting loss of revenue, the Commission commanded the enlarged service to be supplied. In so deciding, the Commission, in our view, unacceptably departed from the authority conferred upon it by the Compact.

When Congress consented to the Compact in 1960, it elected to treat the metropolitan area of Washington as a geographical unit, with the Commission as the central licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these included the issuance by the Commission of a certificate of public convenience and necessity. Recognizing the equities underlying the familiar "grandfather" approach, the Compact expressly contemplated the issuance of certificates, without new or further proof of public convenience and necessity, to those "bona fide engaged in transportation" on the effective date of the statute. ABW and WMA sought and were given such grandfather certificates. They were not put to any proof

of public convenience and necessity. The transportation they were providing on the effective date of the Compact extended from various points in Virginia and Maryland, respectively, to their terminals at 11th and 12th Streets and Pennsylvania Avenue, N. W., in the District. Their grandfather certificates, by statutory definition, could cover no more, and, as issued, they do not purport to.[2]

II

The Commission may, like most regulatory bodies, require existing certificate holders to extend their services beyond those previously authorized. This power is reposed in Section 4(e) of the Compact, the full text of which is set forth in the margin.[3] It will be observed that, in

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[2] It is familiar law that the grandfather principle in public utility licensing is founded upon actual—and not potential—operations. United States v. Carolina Freight Carriers Corp., 315 U.S. 475 (1942). And see Holiday Tours, Inc. v. WMATC, 122 U.S.App.D.C. 196, 352 F.2d 672 (1965), and Gadd v. WMATC, 121 U.S.App.D.C. 7, 347 F.2d 791 (1965). There is no reason to suppose that Congress read the Compact language of "bona fide engaged in transportation . . . on the effective date of this Act" in any manner contrary to this principle. See also Nashua Motor Express, Inc. v. United States, 230 F. Supp. 646 (D.N.H. 1964).

[3] "The Commission may, if it finds that the public convenience and necessity so require, require any person subject to this Act to extend any existing service or provide any additional service over additional routes within the Metropolitan District; provided, however, that no certificate shall be issued to operate over the routes of any holder of a certificate until it shall be proved to the satisfaction of the Commission, after hearing, upon reasonable notice, that the service rendered by such certificate holder, over such route, is inadequate to the requirements of the public necessity and convenience; and provided, further, if the Commission shall be of opinion that the service rendered by such certificate holder over such route is in any respect inadequate to

addition to a general finding of public convenience and necessity as a condition of such extension, there are precise limiting provisos applicable to those cases where the service extension is over the routes of another certificate holder. These are (1) that the latter's service is found to be inadequate, and (2) that, if so found, he be given a chance to remedy it. The Commission made no such finding in respect of Transit in this case.[4]

Before the advent of the Compact, a carrier coming into the District of Columbia from Maryland or Virginia needed certificate authority for this interstate service from the Interstate Commerce Commission. It was the practice of that agency to specify only the District of Columbia as the terminus of the service, leaving it to local regulatory authority to control the street routings and termini within the District. This latter authority for years was exercised by a Joint Board made up of the Public Utilities Commission of the District and the District

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the requirements of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to operate over such route; and further provided that no person subject to this Act may be required to extend any existing service or provide any additional service over additional routes within the Metropolitan District unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to this Act."

[4] Transit intervened in the proceedings instituted by the Commission looking toward an extension of the services of ABW and WMA; and it participated in the hearing. As the Commission's decisional order notes, Transit urged in opposition that it would lose "a great amount of traffic which it now handles via a transfer arrangement," and that new certificate authority could not, under Section 4(e), be given ABW and WMA without a finding as to inadequacy of Transit's service and the affording of an opportunity to Transit to repair any inadequacy found.

Commissioners. It was from this source that ABW and WMA originally received the authority to traverse certain streets from the District line to the terminal points at 11th and 12th Streets and Pennsylvania Avenue. Prior to the Compact, they had no authority to extend their operations beyond these points.

The Commission now appears to assume that, since it has in effect succeeded to the authority of both the Interstate Commerce Commission and the Joint Board of the District of Columbia, it may treat ABW and WMA as being already clothed with certificate authority to go anywhere in the District that the Commission thinks desirable. On this theory, the protections of Section 4(e) of the Compact for existing certificate holders are not applicable, and the Commission need not regard route extensions of the kind here ordered as new and competitive grants of certificate authority. We think this assumption is clearly at odds with the Congressional purposes to be discerned from the Compact and the statute approving it.[5] What

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[5] As remarked above, Note 1, Congress was careful to make clear that no rights of Transit under its franchise were to be impaired by the Compact. Section 3 of the franchise statute is as follows:

> No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia (referred to in this part as the "Commission") to the effect that the competitive line is necessary for the convenience of the public.

We need not decide whether this adds anything to the more specific protections contained in Section 4(e) of the Compact, but it emphasizes a Congressional concern that Transit was to be protected against competition except as such competition was found to be necessary to the public

the Joint Board or the Public Utilities Commission of the District of Columbia might have done before the 1956 franchise statute and the 1960 Compact are not the measure of the Commission's authority now.

Transit has been given no exclusive and permanent monopoly. The Commission can, with due observance of the requirements of the statute and upon proper findings, grant certificate authority competitive with that held by Transit. What the Commission cannot do is to extend the routes in the District of ABW and WMA in a manner competitively adverse to Transit without taking into account the limiting conditions contained in Section 4(e), and that involves a concept of the public convenience and necessity which goes far beyond that of the riders of ABW and WMA alone.

There is no serious dispute here that the route extensions ordered will have a substantial financial impact upon Transit.[6] The Virginia resident who formerly had to continue his journey from 12th and Pennsylvania to 18th and L on Transit now can complete that journey on ABW without the need of using Transit. This may be a fine thing for him, but his convenience is not, under the regulatory scheme, the sole criterion. Transit has rights and responsibilities under that scheme as well. Its ability

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convenience. The latter concept would seem to embrace a broader view of the public interest than the Commission thought was involved in this case.

[6] There was testimony by Transit that it would lose 17½¢ from the joint-fare arrangement previously in effect for each passenger from Virginia or Maryland who desired to continue by bus to the 18th and L Streets area. This was estimated as entailing a revenue loss of from $130,000 to $600,000 per year. The Commission's Staff witness, although not accepting the accuracy of these estimates, did not regard the differences as important because he would recommend the route extension in any event.

to provide good transportation service to the residents of the District of Columbia at reasonable rates is intimately related to the degree of utilization of its service. In transportation, as elsewhere, volume critically affects capacity to provide the best service at the lowest rates. To take away a part of Transit's volume by putting new competition on its routes may conceivably have a significantly adverse impact upon those bus riders in the District who must look to Transit for intra-District service.

We do not say that the Commission could under no circumstances do what it has done. What we do say is that such action must be taken in conformity with the statutory requirements and by reference to the statutory standards. That was clearly not done here; and accordingly, the route extensions for ABW and WMA ordered by the Commission must be set aside.

It is so ordered.

BEFORE THE
WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION
WASHINGTON, D. C.
ORDER NO. 581

IN THE MATTER OF:

Order Instituting Investigation to Determine Whether WMA Transit Company and Alexandria, Barcroft, and Washington Transit Company, Should Extend Bus Routes in Washington, D. C.

Served
March 25, 1966

Docket No. 91

APPEARANCES:

STANLEY H. KAMEROW, 1025 Vermont Avenue, N. W., Washington, D. C., appearing on behalf of WMA Transit Company, Respondent.

S. HARRISON KAHN, and *ROBERT T. MITCHELL, JR.,* 733 Investment Building, Washington, D. C., appearing on behalf of Alexandria, Barcroft and Washington Transit Company, Respondent.

MANUEL J. DAVIS, 1629 K Street, N. W., Washington, D. C., appearing on behalf of Washington, Virginia and Maryland Coach Company, Inc., Intervenor.

JOHN R. SIMS, JR. and *HARVEY M. SPEAR,* 3600 M Street, N. W., Washington, D. C., appearing on behalf of D. C. Transit System, Inc., Intervenor.

RUSSELL W. CUNNINGHAM, 1815 North Fort Myer Drive, Arlington, Virginia, appearing on behalf of the Washington Metropolitan Area Transit Commission.

This matter came before the Commission upon the recommendations of the Engineering staff to require A. B. & W. Transit Company ("A. B. & W."), and WMA Transit Company

("WMA"), to extend their routes to an area in the vicinity of 18th and L Streets, N.W., Washington, D. C. At the present time the service of these carriers generally terminates in the vicinity of 11th and 12th Streets and Pennsylvania Avenue, N.W., Washington, D. C. Under the staff proposal, A. B. & W. and WMA would establish additional terminal points in the vicinity of 18th and L Streets, N.W.

By Order No. 482, served May 25, 1965, the Commission ordered that an investigation be made and hearing held concerning the propriety and reasonableness of the staff's recommendations discussed above.

A. B. & W. and WMA were made respondents and D. C. Transit System, Inc., ("D.C. Transit" or "Transit"), and Washington, Virginia and Maryland Coach Company, Inc. ("W. V. & M."), were permitted to intervene in the proceeding. Public hearings were held on June 22, August 10, 11, 13 and 17, 1965. In addition to the voluminous oral testimony, some one hundred eighty-six (186) exhibits were offered into evidence, of which four (4) were not received. The Commission also had the benefit of briefs.

Prior to and during the course of this proceeding, several motions were filed, including a motion to terminate the proceeding, a motion for proposed report and a motion for oral arguments, the latter of which was filed subsequent to the filing of briefs. The examiner properly denied some of these motions, and those motions which were not denied are hereby denied. The Commission is of the opinion that the evidence adduced at the hearings and briefs of counsel are more than adequate to enable the Commission to reach a fair and equitable decision in this matter, and that oral arguments would not contribute materially to the decision-making process.

The staff presented the testimony of Mr. Charles W. Overhouse, the Commission's Chief Engineer; Mr. Paul W. Foreman, Defense Coordinator for the General Services Administration; Mr. William D. Heath, Executive Director, Motor Vehicle Parking Agency of the District of Columbia; Mr.

Daniel J. Hansen, Deputy Director of Traffic Engineering and Operations for the D. C. Department of Highways and Traffic; and Mr. Edwin L. Kesler, a resident of North Springfield, Virginia.

Respondent, A. B. & W., presented the testimony of Mr. Richard F. Lawson, its Operations Manager, and Mr. George R. Snyder, a Certified Public Accountant employed by A.B.&W. A.B.&W., while admitting it held appropriate authority to serve the area proposed by the staff, opposed the proposed route extensions on the ground that the proposed service would be uneconomical, contending that the proposed service would result in additional expenses without an attendant increase in revenues.

Intervenor, D. C. Transit, presented the testimony of Mr. William E. Bell, its Assistant Vice President, Research and Development; Mr. Gordon Phillips, its Associate General Counsel; Mr. John R. Sims, Jr., its Associate General Counsel; and Mr. Parker C. Peterman, its Vice President and Comptroller. D. C. Transit opposed the proposed route extensions on two grounds, namely: (1) that the proposed service would lure away from it a great amount of traffic it now handles via a transfer arrangement and (2) that the respondent-carriers' certificates do not authorize the proposed transportation, and, because of this fact, are not entitled to such authority until the Commission finds that the existing service is inadequate and D. C. Transit is given the opportunity to correct any deficiencies found to exist in the present service.

Intervenor, W. V. & M., presented the testimony of Mr. S. A. DeStefano, its President, in opposition to the proposed route extension.

Respondent, WMA, presented rebuttal testimony of its Controller, Mr. Samuel A. Sardinia. WMA agreed with the staff's position that it holds appropriate authority from the Commission to operate the proposed service, and is willing to institute the proposed service if ordered by the Commission.

The staff recommended that the Commission require A.B.&W. and WMA to extend their present service to the vicinity of 18th and L Streets, N.W., by route authorizations since in the staff's view, the certificates of public convenience and necessity of both carriers already authorize such operations.

There are two basic issues involved in this proceeding. The crucial issue is whether or not A. B. & W. and WMA presently have the authority by virtue of their existing certificates of public convenience and necessity to perform the proposed transportation. If the present certificates of these carriers authorize such transportation, D. C. Transit and W.V.&M. cannot be heard to complain; the Commission will be merely requiring A. B. & W. and WMA to do what they are by law required to do under their existing certificates of public convenience and necessity. If A. B. & W. and WMA already hold appropriate authority to perform the proposed transportation, the secondary issue becomes one of determining whether or not it would be in the public interest to require such transportation. The public interest question can be largely determined by an inquiry into the demand for the proposed service.

The answer to the crucial question as to whether or not the certificates of A. B. & W. and WMA authorize the subject transportation appears to lie in the certificates themselves. Before looking to the actual language of the certificates, however, it is necessary to consider the circumstances surrounding their issuance. Both certificates were granted pursuant to the "grandfather" provisions of the Washington Metropolitan Area Transit Regulation Compact ("Compact"). In the case of WMA, it had, before the creation of the Commission, operated within Prince Georges County, Maryland, under authority granted to it by the Maryland Public Service Commission; within the District of Columbia, by virtue of the authority granted by the District of Columbia Public Utilities Commission[1] ("PUC"); and in interstate commerce be-

[1] Now the District of Columbia Public Service Commission.

tween points in Maryland and points in the District of Columbia, under certificates of public convenience and necessity granted by the Interstate Commerce Commission ("ICC"). In this latter franchise, as was its custom, the ICC[2] specified the terminal service (i.e., between Maryland points, Washington, D. C.), and specified the routes in Maryland over which the service was to be operated, to the District of Columbia line. Treating the District of Columbia as a city, the ICC did not specify the street routings or terminal locations. All of these pre-compact authorities, plus exempt operations, formed the basis for the WMA "grandfather" claim, and the resulting certificate issued by this Commission combined all of them into one document.

In the case of A. B. & W., the above described background is applicable, except that its operations are between Washington, D. C., and the Northern Virginia area, comprising Alexandria and parts of Arlington and Fairfax Counties. Its ICC authority, similarly, provided for regular-route, common carrier service between Washington, D. C., and points in Virginia.[3] The "grandfather" certificate issued by the Commission encompassed all of A. B. & W.'s prior authority.

D. C. Transit was a similar recipient of a "grandfather" certificate, which was based on pre-compact authority, namely a franchise from the Congress to operate a mass transportation system within the District of Columbia and between points within the Metropolitan area, subject "to the rights to render service within the Washington Metropolitan Area possessed, at the time[4] this section takes effect, by other common carriers of passengers . . ,"[5] and certificates and permits issued by the ICC and the Maryland Public Service

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[2] Exhibit 84, I.C.C. Certificate of Public Convenience and Necessity, No. M.C. 3677, dated February 24, 1954.

[3] Exhibit 83, I.C.C. Certificate of Public Convenience and Necessity, No. M.C. 1800, dated August 7, 1951.

[4] July 24, 1956.

[5] D. C. Transit Franchise, Title I, Part 1, Section 1, P.L. 757.

Commission. It is readily discernible that the respondents' authority antecedes Transit's franchise by several years,[6] and the authority granted by said franchise was subject to the rights contained in the certificates.

The ICC certificates do not include any restrictions on the rights of the respondent carriers to serve any area of Washington, D. C. in interstate transportation. They were, therefore, authorized to transport passengers in interstate transportation to any point in the District of Columbia, subject to local traffic and routing regulations imposed by the District of Columbia. The District of Columbia, through a Joint Board, composed of the PUC and the Commissioners of the District of Columbia,[7] had entered many directive orders of this nature, some of which are exhibits in this proceeding. These routing orders served the same function as this Commission's route authorization. See, for example, Exhibit 86, which is a compilation of orders[8] of the PUC dealing with re-routing, institution of new terminals, and establishment of fringe parking lots. It should be noted that apparently the PUC recognized that the carrier had the necessary certificate operating rights, as there is no mention of certificates of public convenience and necessity - the only criterion being the "public interest."

In 1955, the PUC had a proceeding before it in which similar issues were involved. WMA had requested an extension of a route within the District of Columbia. Transit's predecessor Capital Transit, appeared in opposition, alleging that the change of route would make it competitive with Capital Transit's service, and that under the terms of Section

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[6] The certificates referred to herein are revised. The respondents have been so engaged in interstate operations for many years preceding the dates on the revised certificates.

[7] D. C. Code 40-603(e), 1961 Ed.

[8] Including: D. C. Public Utilities Commission Order No. 2377, dated September 9, 1942; Order No. 4224, dated October 7, 1955.

4 of the Merger Act (Section 44-201, D.C. Code, 1951), the PUC could not permit the extension in route without a finding that public convenience required the extension. The PUC held that a certificate of public convenience and necessity was not required under Section 4 of the Merger Act.[9] The language of that section is almost identical with that in the Franchise.

As previously discussed, the pre-compact operating rights of these carriers were consolidated under a "grandfather" claim, and appropriate certificates were issued by this Commission. The A. B. & W. Certificate (No. 11), provides, in part, as follows:[10]

REGULAR ROUTE

Passengers and their baggage . . . over regular routes.

Between Washington, D. C., and Virginia, between Washington, D. C., Maryland and Virginia, serving all intermediate points; restricted however unless otherwise specifically provided, against the transportation of intrastate passengers in Virginia, Maryland, and the District of Columbia, as follows:

No. 1 From Fort Belvoir, Virginia, over U.S. Highway No. 1, to junction Virginia Highway No. 617, thence over Virginia Highway No. 617 to junction Virginia Highway No. 350 (Shirley Memorial Highway), thence over Virginia Highway 350 to Washington, D. C., and return over the same route.

The WMA Certificate (No. 8) provides, in part, as follows:[11]

REGULAR ROUTE

Passengers and their baggage, and express, in the same vehicle with passengers.

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[9] Exhibit 87, Public Utilities Commission Order No. 4158, dated January 28, 1955.

[10] Exhibit No. 2.

[11] Exhibit No. 3.

Between Washington, D. C., and points in Maryland; and between points in Maryland, serving all intermediate points; restricted, however, against the transportation of intrastate passengers in the District of Columbia.

No. 1 From Washington, D. C. over city streets to Southern Avenue, thence over Business Maryland Route 4, 56th Avenue, Maryland Routes 214, 389, 704, Greenleaf Road, 82nd Avenue, Barlowe Road, Maryland Route 202, Prince Georges Avenue, Hawthorne Street, 73rd Avenue, Forest Road, 74th Avenue to Kent Village, and return over the same route.

In not designating specific streets within the District of Columbia, this Commission clearly followed the procedure of the ICC. Years ago, the ICC adequately answered the charge similar to that raised by Transit herein. In refuting a claim that city streets must be designated, the ICC said:

> To the contrary, in authorizing operation over a route traversed within municipalities or with the routes between adjoining municipalities, it has not been our general policy to specify or designate the streets over which operations may be conducted except in some few instances. In such instances, however, the streets have been specified or named in the authority granted and a carrier holding such authority of course may not operate within the municipalities authorized over streets other than those specified. For an example of where we have specified certain streets in the issuance of a certificate, see *Lincoln Tunnel Applications*, 12 M.C.C. 184. But where the streets within a municipality have not been designated by us, and we have authorized operations over city streets, it seems clear that the carrier is authorized to operate over any city street within the municipality or between adjoining municipalities, and a review of the cases involving this question confirms this. . . .
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> Moreover, it is to be noted that in authorizing the transportation of passengers between Manhattan and points in the so-called short haul, mass transportation area, city streets are not designated within Manhattan.

> If a carrier's certificate does not specify the city streets over which it may conduct operations, it seems obvious that it may conduct such operations over any city street, otherwise it is doubtful whether changes in operations within Manhattan could be made subject only to the approval of the police department of the City of New York as is now true, in view of the certificate provisions of the Act. *Hudson Bus Transportation Co., Inc., Passenger Service,* 5 Fed. Car. Case 31, 197 (1946).

In another proceeding before the ICC, A. B. & W. had requested authority to serve the Washington National Airport. At that time it held a certificate authorizing regular route operations between Washington, D. C. and Mt. Vernon, Virginia, serving all intermediate points. The ICC pointed out that A. B. & W.'s existing authority accorded it the right to serve said airport. The ICC then said:

> Such operations would be no different, insofar as regulation under the act is concerned, from operations by applicant over the highways and streets of Alexandria, another intermediate point on the same route. Applicant's right to operate over *any* public highway or street within the municipal limits of Alexandria, subject to all lawful requirements of that city, could not well be questioned by anyone. *A. B. & W. Transit Company, Extension of Operation – Washington National Airport,* 30 M.C.C. 618, at Page 620.

The Commission can only conclude that the certificates held by A. B. & W. and WMA already authorize the proposed service extensions, and these carriers may be required to provide the proposed service, through route authorizations, under the terms of their certificates.

The Commission will now discuss the issue of whether or not it would be in the public interest to require A. B. & W. and WMA to extend their routes as proposed pursuant to their certificates of public convenience and necessity.

The primary basis for the Engineering staff's recommendation that the present service of A. B. & W. and WMA be extended to the vicinity of 18th and L Streets, N.W., was

an extensive origin-destination survey of the present patrons of these two companies. The Commission's Chief Engineer testified at length concerning this survey. The record shows that in February of 1965, A. B. & W. and WMA were contacted by the Commission in an effort to seek their cooperation in conducting the aforementioned survey. The Companies agreed to bear all expenses incurred in connection with the survey. On March 22, 1965, during the morning peak period, between approximately 6:00 A.M. and 9:30 A.M., postal card questionnaires were distributed to all A. B. & W. and WMA patrons traveling inbound to points in Washington, D. C. The postal cards could be returned to the driver or dropped in the mail, postage free.

A total of 22,000 cards were printed; 16,000 for A. B. & W. and 6,000 for WMA. Approximately 11,000 cards were distributed by A. B. & W. and 1,500 by WMA. According to the testimony of Mr. Overhouse, excellent results were obtained from the survey. Mr. Overhouse stated as follows:

> Of the cards distributed, approximately 6,000 were returned. Some of these could not be used because they were illegible, ambiguous, blank, etc.
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> A total of 5,166 cards were usable; 4,366 from the patrons of A. B. & W. and 830 from the patrons of WMA. The destinations expressed on the cards were analyzed, and it was the Engineering Department's view that a patron who could ride a bus to within three blocks of his ultimate destination without transferring was being served conveniently and adequately. Conversely, it was considered that if a through route would not take him within three blocks (approximately ¼mile) of his "downtown destination," his service was inconvenient and inadequate.
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> Using the above as a guide, it was noted that approximately 41% of present patrons were not being served satisfactorily because their destinations were farther into the northwest section of the city than the present terminals of their companies would permit them to ride. Analysis of the total sample disclosed the following:

A. B. & W. TRANSIT COMPANY

	PSGRS	%
Total Usable Sample	4336	100.0
Presently Served Adequately	2645	61.0
Additional That Would Be Served by Route to 18th & L, N.W.	1110	25.6
Remainder Served Inadequately	581	13.4

WMA TRANSIT COMPANY

Total Usable Sample	830	100.0
Presently Served Adequately	394	47.5
Additional That Would Be Served By Route to 18th & L, N.W.	303	37.0
Remainder Served Inadequately	133	15.5

Based on the survey, the Engineering Department has concluded that at present, 39% or 1,691 A. B. & W. passengers who ride on a normal weekday during the A.M. commute period, and who responded to the survey, are not being adequately served at their destinations in Washington, D. C., and that this number could be reduced to 13.4% or 581 passengers, by extension of that Company's routes to 18th & L Streets, N.W. Likewise, 52.5% or 436 patrons in the WMA sample are not being served adequately, and that an extension of that Company's routes to 18th & L Streets, N.W., would reduce the number to 15.5% or 133 passengers.

Other smaller concentrated areas of inadequate service were also pointed up by the survey, but we found that extensions into the largest of these areas would only adequately serve a minimal percentage of present riders. In each case, extension of service into these smaller areas only produced additional satisfactory service to less than 5% of either Company's patrons.

It was felt that the major service-problem area was to the northwest of the present terminals of A. B. & W.

and WMA, and that the round-trip extensions of 2.15 miles of A. B. & W. lines, and 2.80 miles of WMA lines would serve, at the absolute minimum, an additional 1,400 of these Companies' present daily peak commute period passengers at a satisfactory level.

The thrust of Mr. Overhouse's testimony was that the patrons of A. B. & W. and WMA are not being adequately served under the present scheme of operations. According to the results of the survey, up to 25% of A. B. & W.'s patrons whose destinations are Washington, D. C., would be directly benefitted by route extensions of A. B. & W. into the vicinity of 18th and L Streets, N.W.; up to 37% of WMA's patrons would be benefitted.

The testimony of the other witnesses testifying on behalf of the staff, including Mr. Foreman, Mr. Heath, Mr. Hansen, and Mr. Kesler, corroborates and substantiates the results of the survey, that the 12th Street and Pennsylvania Avenue Terminal of A. B. & W. and the 11th Street and Pennsylvania Avenue Terminal of WMA no longer adequately serve the needs of a substantial number of the patrons of these carriers since their present destinations are in the vicinity of 18th and L Streets, N. W.

Mr. Paul Foreman, Defense Coordinator for the General Services Administration, is uniquely qualified to recommend solutions to transportation problems as they relate to Federal employees in the Nation's Capital. Mr. Foreman testified that since 1962 there has been a tremendous increase in the number of federal employees located in the mid-town, 18th and L Streets area. He concluded that the proposed extension was needed, and in addition to benefitting existing riders, would attract those now using other modes of transportation.

Mr. William D. Heath, Executive Director, District of Columbia Motor Vehicle Parking Agency, testified in relation to further growth of the downtown area. Mr. Heath stated that in 1955 the employee population in the area of 18th and L Streets, N.W., was approximately 26,000. By 1965, the employee population in this area had increased to ap-

proximately 45,000, or an increase of about 70%. When buildings under construction are completed and occupied they will have approximately 56,000 employees or a gain of over 100% since 1955.

Mr. Daniel J. Hansen, Deputy Director of Traffic Engineering Operations, D. C. Department of Highways and Traffic, testified that his department had reviewed the staff proposal and had conducted a number of field studies relative thereto. These included personal interviews, pedestrian counts and traffic studies. Mr. Hansen concluded that the proposed extension of bus service would encourage people to use public transportation and thereby reduce the number of private passenger cars that enter the District of Columbia daily, solely for the purpose of bringing commuters to work in the morning and returning them home in the evening.

Mr. Edwin L. Kesler, a public witness who appeared at the hearing voluntarily, testified that his wife formerly worked in the area to be served by the proposed extension. Her travel pattern was from home to 18th and Constitution Avenue, thence by foot to 18th and M Streets, N.W.; transfer to Transit was too time consuming, which prompted her to walk. Mr. Kesler corroborated Mr. Hansen's testimony and stated that in foul weather he would drive his wife to work; because her quitting time varied from day to day, he frequently had to circle the block several times. It was Mr. Kesler's opinion that the existing service is also unsatisfactory to persons similarly situated.

As previously noted, both A. B. & W. and WMA agree that their present certificates authorize the proposed route extensions. WMA is not only willing to render the proposed service, but tendered a definite scheme of operations which it felt would be profitable. In addition to providing better service for existing patrons, it was stated that additional patrons would be attracted. The thrust of A. B. & W.' opposition is directed toward the economic feasibility of the proposed transportation. A. B. & W.'s objection is easily overcome by pointing out that at any time when the demand

for the service no longer justifies the cost involved, appropriate adjustments in service will be made commensurate with the demand, and such action will be taken administratively consistent with the present practice.

The Commission can give little weight to W. V. & M.'s objection to the proposed route extensions. W. V. & M. and A. B. & W. operate primarily between adjacent areas in Northern Virginia and the District of Columbia. Since A. B. & W. serves an area comprised of Alexandria and the eastern portions of Arlington and Fairfax Counties, and W. V. & M. serves an area to the north and west of the A. B. & W. area, there is only minimal competition between the two carriers where their areas meet. Any siphoning of traffic by the proposed service from W. V. & M. operations would be de minimis. W. V. & M. already serves the present terminal area in Washington, D. C., served by WMA and A. B. & W., and in addition, serves the 18th and L Streets area.

The Commission has carefully considered the evidence adduced by D. C. Transit in this proceeding. The testimony of D. C. Transit to the effect that it stands to lose gross revenues in excess of $600,000 annually, if the staff's recommendations are effectuated, was predicated on the premise that every person now taking advantage of the joint-fare arrangement between respondents and D. C. Transit would no longer use the service of D. C. Transit. Such a supposition is not only contrary to the record, but is invalid on its face. The survey conducted by the staff—which was the only real evidence of probative value on the issue—did not provide any basis for such a premise. D. C. Transit's contention that the proposed route extensions will have an adverse economic effect on its present operations must be related to the conveniences which will result to the traveling public if the service is extended. In viewing the economic impact the proposed route extensions may have upon D. C. Transit, the Commission cannot overlook the possibility, and in fact, the probability, that the improved service might very well generate additional bus patronage to such an extent that there will be no substantial adverse effects on D. C. Transit.

In providing a direct service for bus patrons from points in Virginia and Maryland, discussed herein, a substantial number of automobiles may be eliminated from the downtown area, which will be of direct economic benefit to D. C. Transit. It is the Commission's considered judgment that there will be no substantial economic effect upon D. C. Transit if the proposed transportation is performed.

One of the basic purposes for the creation of this Commission was to provide for the regulation and improvement of mass transit and the alleviation of traffic congestion in the Washington area without regard to political boundaries. If the maximum results are to be obtained, it is most essential that the maximum benefits be derived from the flexibility inherent in our all-bus system. All of the carrier-parties to this proceeding have been articulate exponents of the flexibility inherent in a bus system. The staff proposal is a vivid demonstration of this principal.

Greater use of public transportation is one of the important keys to the alleviation of traffic congestion on the downtown city streets. This record is very clear that a substantial number of daily commuters will be greatly convenienced if the proposed route extensions are effectuated, since a large segment of the public will have the benefit of a single ride in a single vehicle from origin to destination. If the four major transit operators are to continue to meet their public service responsibility and provide the standard of service required, situations involving minimal overlapping of service and minimal competition among the carriers cannot be avoided. If adequate and convenient methods of operations and arrangements among the carriers which are needed in order to meet the demands for public transportation cannot be accomplished voluntarily, then the Commission has no other course in the performance of its responsibilities under the law but to take the necessary action to compel such operations and arrangements. With reference to the case at hand, the Commission does not feel that it is doing any violence to the operations of any carrier involved; to the contrary,

the action taken will represent a major transit improvement for numerous daily bus riders. The service to be extended by A. B. & W. and WMA is largely[12] ~~interstate~~ in scope. D. C. Transit does not operate *interstate*, nor does its certificate authorize *interstate* operations, between the District of Columbia and those portions of Maryland and Virginia affected by the extension proposal.

The holding by the Commission to the effect that the existing certificates of A. B. & W. and WMA authorize the proposed route extensions removes the major objections of all parties to the proceeding. Obviously, under the ruling of the Commission, D. C. Transit is not entitled to an opportunity to improve its service under Section 4(e) or Section 4(g), Article XII, Title II of the Compact, since no certificates of public convenience and necessity are being issued. D. C. Transit's contention that the new service, if authorized, will be competitive with its service, is without merit.[13] But, even if it were construed to be competitive, it is nevertheless authorized by certificates of public convenience and necessity, issued pursuant to the provisions of the Compact and with full knowledge and consent of all parties to this proceeding.

The Commission finds and concludes that the public interest will be served if A. B. & W. and WMA are required to extend their routes so as to provide bus service to the 18th and L Streets area of Washington, D. C.

The Commission will issue herewith appropriate route authorizations directing A. B. & W. and WMA to extend their present service to include the vicinity of 18th and L

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[12] The certificate of WMA authorizes limited intra-District of Columbia service and those persons using such service will be benefitted by the route extensions.

[13] The President of W. V. & M., a subsidiary of D. C. Transit, freely admitted that its service between Northern Virginia and the District of Columbia via the 18th and L Streets area, while being parallel to the service of D. C. Transit, is not a competitive service.

Streets, N.W., in substantial compliance with the recommendations of the Commission's Engineering staff.

THEREFORE, IT IS ORDERED:

1. That A. B. & W. Transit Company and WMA Transit Company be, and they are hereby, authorized and directed to extend their service to the vicinity of 18th and L Streets, N.W., Washington, D. C.

2. That A. B. & W. Transit Company and WMA Transit Company be, and they are hereby, required to extend their service referred to in paragraph 1 above, in accordance with route authorizations issued in compliance with the established procedures of the Commission and attached hereto.

3. That the service authorized and directed to be operated herein be instituted forthwith, but in no event later than sixty (60) days from the date of this Order.

BY DIRECTION OF THE COMMISSION:

DELMER ISON
Executive Director

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION

Route Authorization No. 1 – 66

IN THE MATTER OF: March 25, 1966

Establishment of Bus Routes for Alexandria, Barcroft and Washington Transit Company in Washington, D. C.

By Order No. 581, served March 25, 1966, Alexandria, Barcroft and Washington Transit Company was granted authority to extend its bus routes in Washington, D. C., to

the vicinity of 18th and L Streets, N. W. To establish such routes within the District of Columbia, authority is hereby granted to Alexandria, Barcroft and Washington Transit Company to operate in the following manner:

Over regular route to 14th Street and Pennsylvania Avenue, N. W., continue north on 14th Street, west on H Street, north on 17th Street, east on main roadway of K Street to 17th Street, continue on south service roadway of K Street to 16th Street, south on 16th Street, east on Eye Street, south on 14th Street to C Street, S. W., thence over regular route.

Over regular route to 12th Street and Pennsylvania Avenue, N. W., thence northwesterly on Pennsylvania Avenue, north on 14th Street, west on H Street, north on 17th Street, east on main roadway of K Street to 17th Street, continue on south service roadway of K Street to 16th Street, south on 16th Street, east on Eye Street, south on 14th Street to C Street, S. W., thence over regular route.

FOR THE COMMISSION

DELMER ISON
Executive Director

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION

Route Authorization No. 1 – 66

IN THE MATTER OF: March 25, 1966

Establishment of Bus Routes for WMA Transit Company in Washington, D. C.

By Order No. 581, served March 25, 1966, WMA Transit Company was granted authority to extend its bus routes in Washington, D. C., to the vicinity of 18th and L Streets,

N. W. To establish such routes within the District of Columbia, authority is hereby granted to WMA Transit Company to operate in the following manner:

Over regular route to 11th Street and Pennsylvania Avenue, N. W., thence northwesterly on Pennsylvania Avenue, north on 14th Street, west on H Street, north on 17th Street, east on main roadway of K Street to 17th Street, continue on south service roadway of K Street to 16th Street, south on 16th Street, west on Eye Street, south on 14th Street, southeasterly on Pennsylvania Avenue to Third Street, N. W., thence over regular route.

Over regular route to 11th Street and New York Avenue, N. W., thence southwesterly on New York Avenue, west on H Street, north on 17th Street, east on main roadway of K Street to 17th Street, continue on south service roadway of K Street to 16th Street, south on 16th Street, east on Eye Street, south on 11th Street, thence east on Eye Street over regular route.

FOR THE COMMISSION

DELMER ISON
Executive Director